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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1285-2023
Date of Decision:01.04.2024

Sumer Singh …Appellant

Vs.

Rekha Kathuria …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Ganga Singh Gopera, Advocate
for the appellant.

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N.S.Shekhawat J.

1. The applicant has filed the present application under Section 378 (4) Cr. P.C with a prayer to grant special leave to appeal against the impugned judgment dated 08.08.2023, passed by the Court of Judicial Magistrate Ist Class, Faridabad, whereby the respondent was ordered to be acquitted of the notice of accusation.

2. The complaint in the present case was filed by the applicant/complainant by alleging that he and husband of the respondent namely Rajesh Kathuria were known to each other since long and had family relations. The respondent and her husband approached the applicant to provide financial help to support their business in the month of October 2017. Since they had family relations, the applicant agreed to lend a sum of Rs.14,50,000/- on 03.11.2017 as a friendly loan to the respondent and her husband for business purpose and the respondent and her husband had promised to the applicant that the amount shall be returned on or before 10.08.2018. At that time, Rajesh

Kathuria, the husband of the respondent had issued two post dated cheques bearing No.269454 and 269455, both dated 10.08.2018 amounting to Rs.5,00,000/- each, both drawn on ICICI Bank Branch Sector 21-C, Faridabad as a part payment in favour of the applicant. For the remaining amount of Rs. 4,50,000/-, the respondent had issued cheque bearing No. 293731 dated 10.08.2018, drawn on Sarva Haryana Gramin Bank, Faridabad in favour of the applicant with the assurance that the cheques will be encahsed on presentation. Apart from that, the respondent and her husband had executed an affidavit, pronote and receipt jointly on 03.11.2017 for the said borrowed amount in favour of the applicant. In the month of August 2018, the applicant approached the respondent to return the amount to him and the respondent asked the applicant to present the cheques in the bank. On assurance by the respondent, the cheques were presented in the bank, but the same were returned with the remarks "Funds Insufficient" vide the return memos dated 06.10.2018. The applicant was left with no other remedy except to issue statutory notice to the respondent, calling upon her to make the payment, but no payment was made. Consequently, the applicant had filed the present complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act").

3. During the course of preliminary evidence, the applicant examined himself as CW-1 and tendered his duly sworn affidavit as Ex.CW1/A. Applicant also placed reliance upon the following document: Ex.C1-original cheque dated 10.08.2018; Ex.C2- return memo; Ex.C3- legal notice; Ex.C4-postal receipt and Mark A-affidavit,Mark B-pronote.

4. After completion of the preliminary evidence, notice of accusation under Section 138 of the "Act" was served on the respondent and she pleaded

not guilty and claimed trial. Thereafter, the plea of the respondent was recorded in terms of Section 263(g) Cr.P.C and the respondent stated that she did not know the applicant. She was a house-wife and her husband namely Rajesh Kathuria was a business man and was running a social committee in his circle. She further stated that a person namely Jitender, who was employee of Haryana Police had procured her signature on blank cheques and other documents and her husband had handed over the blank signed cheques and blank papers to Jitender. Jitender received the entire amount from her husband, but did not return her security cheques and other documents. Further, she stated that Jitender had committed a fraud with her and on coming to know about this, the applicant had filed the present complaint. She had no legal liability towards the applicant. In fact, the applicant in collusion with Jitender, a police official, misused her security cheques and documents, which were signed by her to file a false criminal complaint.

5. Learned counsel for the applicant submits that the impugned judgment passed by the Trial Court is erroneous, against the facts and law and unsustainable. He further contends that in fact, the respondent and her husband had approached the applicant to provide support to them in their business and in discharge of the legal liability, the cheques were issued by the respondent. Still further, the respondent had nowhere denied that she had not signed the cheques in question. Further, there is no denial to the fact that the cheque had been filled by her and was also signed by her. Further, the Trial Court wrongly held that the present applicant had no financial capacity to extend the loan of Rs.14,50,000/- to the respondent and her husband. He further submits that once it is found that the cheques in question belong to the respondent, she had signed

the cheques and there is no denial to the signatures, it can be presumed that the cheque was made or drawn for consideration on the date, which the cheque bears. Further, the factum of issuance of cheques in question by the respondent, stood proved from the evidence and there was no evidence to the contrary. Learned counsel further contends that the entire matter had not been examined by the Trial Court in the correct legal perspective and the impugned judgment is legally unsustainable.

6. I have heard learned counsel for the applicant and perused the record.

7. In the present case, the applicant had set up a case before the Trial Court that an amount of Rs.14,50,000/- was extended to the respondent and her husband as a friendly loan for business. During the course of evidence, the applicant appeared as CW-1 and had supported the averments made in the complaint. However, the applicant had stated that he was doing a private job and his salary was Rs.40,000/- per month. Even, as per him, he was running a dairy business and was having five buffaloes. However, he failed to lead any evidence with regard to having dairy business and supply of milk of five buffaloes to anyone. Rather, this was never reflected in the ITR, which was filled by him before the Income Tax Authorities. Even no evidence was led by him to support the said averment made by the applicant. Still further, the Trial Court was right in observing that the applicant had testified that he gave an amount of Rs.14,50,000/- to the respondent and her husband, but no evidence could be led by the respondent to prove his financial capacity. The Trial Court was further justified in observing that the respondent had not placed on record even a single document or any other proof to show that in fact, he had arranged

a sum of Rs.14,50,000/- and gave it to the respondent and her husband as friendly loan that too without any interest. Even as per the admitted case of the prosecution, when the applicant was earning a sum of Rs.40,000/- per month, he would not be in a position to extend the loan of Rs.14,50,000/- to the respondent and her husband. In fact, the Trial Court correctly rejected the complaint preferred by the present applicant.

8. Apart from that, the applicant had placed reliance on Mark A and Mark B i.e. an affidavit and pronote executed by Rekha Kathuria and her husband jointly. However, when the applicant failed to show to the Trial Court that he had got the financial capacity to extend a loan of Rs.14,50,000/- to the respondent and her husband, the Court could not have relied upon Mark A and Mark B. Apart from that, the documents Mark A and Mark B though have been exhibited before the Trial Court, but no witness, who had signed were neither examined nor the said documents have been proved on record, in accordance with law.

9. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra", 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

> *"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in* ***Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -***

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In ***Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867,*** *this Court observed:*

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence

cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

10. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another], decided on 11.07.2022**, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused.

Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough *scrutiny on the accepted legal parameters."*

11. Consequently, the impugned judgment dated 08.08.2023, passed by the Court of Judicial Magistrate Ist Class, Faridabad, is ordered to be upheld.

12. Thus, findings no merits, the application for leave to appeal is dismissed.

13. Pending application(s), if any,are also disposed off.

14. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

(N.S.SHEKHAWAT)
JUDGE

01.04.2024
hitesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No